

Exhibit A

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RE: *In re Aqueous Film-Forming Foams Product Liability Litigation*, Mast Docket No. 2:18-mn-2873-RMG; *City of Camden, et al. v. 3M Co.*, No. 2:23-cv-03147-RMG; and *City of Camden, et al. v. E.I. DuPont De Nemours and Co. (n/k/a EIDP, Inc.) et al.*, No. 2:23-cv-03230-RMG- 3M and DuPont Proposed Settlements: Request from the Leech Lake Band of Ojibwe for clarity on several settlement components.

Dear Michael, Paul, Scott, and Joe:

We write on behalf of the Leech Lake Band of Ojibwe, a federally recognized Indian Tribe and owner and operator of eleven Public Water Systems.

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The water that supplies one of the Band's schools tested positive for PFAS contamination in 2022, but the other ten systems have not tested positive. The Band's right to a remedy under the 3M Settlement is unclear, because the school water system does not supply enough people to qualify for the 3M Class. Of the Band's other ten water systems, several would qualify for the 3M Class by number of users, but have not tested positive and are not required to test for PFAS under UCMR-5. In sum, it appears that one of the Band's water systems has PFAS contamination, and the Band has incurred substantial costs, but it has no remedy under the settlement because none of the Band's water systems appear to qualify for the 3M Class.

Under the DuPont Settlement, the Band's contaminated water system supplying the school—which does appear to be within the DuPont Class—is only eligible for a one-time payment of \$1,750. But it is unclear that if the Band accepts the DuPont Settlement for that one water system whether it releases claims the Band may have for costs associated with adverse health effects for the hundreds of students and staff that have for years been drinking contaminated water at the school. As a result of PFAS contamination in this system, the Band has been forced to provide bottled water to its students and staff and seeks certainty regarding the cost of accepting the DuPont Settlement and releasing claims. In addition, if it accepts the \$1,750 settlement, does the Band also release natural resource claims (for fish, wild rice, and soil contamination)?

The Band has identified several ambiguities in key terms and provisions of the 3M and DuPont Agreements that impacts all federally recognized Tribes. Until these ambiguities are resolved, the Leech Lake Band of Ojibwe, as well as over 500 federally recognized Tribes, cannot make informed decisions to object to, opt out of, or remain in either settlement.

Specifically, the Band seeks clarification of these issues that impact Tribes:

1. Are federally recognized Tribes, and Public Water Systems owned by Tribes, included in the Settlement Classes? (States and the federal government, which like Indian Tribes are sovereigns, are excluded from the Settlement Classes, but the Settlement Class definitions do not expressly address Tribes.).
2. If yes, are the Class Members Public Water Systems, or the owners of Public Water Systems? (Specifically, is a federally recognized Tribe the Class Member, or is the individual Public Water System that the Tribe owns the Class Member? Whether a sovereign tribal nation that owns multiple Public Water Systems is the Class Member significantly affects the legal implications of opting out of or remaining in the settlement classes.).
3. Can a Tribe that owns multiple Public Water Systems opt out some Systems but have others remain in the Class without releasing the claims of the Systems that opt out?
4. Are future claims of a tribal-owned Public Water System that is not a Class Member released if that same Tribe owns a Public Water System that is a Class Member and that remains in the Class?
5. Are claims for remediation and/or damages resulting from PFAS contaminated natural resources, such as fish, game, and crops (including wild rice) covered by the Releases and Covenants Not to Sue?

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6. If a Tribe opts out some Public Water Systems but has others remain in the Class, does the Tribe release all the Tribe's claims for fish, game, crop, and soil remediation and/or damages?

7. Do the release provisions excluding real property claims also exclude release natural resource claims in connection with real property?

8. If a Tribe files an action against 3M or DuPont related to contaminated natural resources, and the source of contamination is a non-tribal Class Member's contaminated water source, would the Class Member (e.g., a city, county, or water district) be liable for the contamination rather than 3M or DuPont?

9. Are claims seeking remediation, monitoring, and/or damages related to costs, such as supplying bottled water, incurred by Tribes and Tribal Health Organizations as a result of PFAS contamination in a Public Water System covered by the Releases and Covenants Not to Sue?

10. How do the indemnity and claims-over provisions of each Settlement impact Tribal Class members? (As sovereign nations, federally recognized Tribes are more akin to states or the federal government than to cities, counties, or water districts. Sovereign nations have different responsibilities, needs, and concerns than a city, county, or water district. If a Tribe remains in a settlement class, it is unclear whether the indemnity provisions shift liability from 3M and DuPont onto the Tribe.)

For these reasons, the Band asks the Co-Leads to work with 3M and DuPont to provide written clarity on the negotiating parties' intent with respect to the status of Tribes under the Proposed Settlements. A clear written statement, with judicial acknowledgement, would allow Tribes to know whether they need to review the Proposed Settlements and decide whether to remain in or opt out.

I. The Agreements are Ambiguous as to Whether Tribes Are Included in the Settlement Classes

The Agreements' settlement class definitions appear to include Tribal owned water systems, and Exhibit F to the 3M Agreement even lists several Tribal Water Systems as eligible Phase Two Claimants. However, Tribes are more similar to states and the federal government, which are excluded from the Settlement Classes, than the cities, counties, and water districts that the settlements include. Considering the stakes of inaction—including the potential to be bound by the settlements and their release provisions with no allocated share—Tribes must be provided with certainty on their status so they can make informed decisions on questions of substantial import to them and their tribal members.

II. The Releases Are Ambiguous Regarding Natural Resource Damages Claims

The Band seeks additional clarification on how the release provisions would affect natural resource claims. Both releases fail to address claims for contaminated natural resources such as soil, wildlife, or crops. Tribes are sovereigns and continue to exercise sovereignty "over both their members and their territory." *United States v. Wheeler*, 433 U.S. 313, 323 (1978). Tribes maintain traditional ways that depend on natural resources within their territories. Tribes are obligated to promote the health and welfare of tribal members, and to regulate the health of the natural environment that support their communities' livelihoods. The release provisions are broad and could be interpreted as including natural resource claims. The parties must resolve this ambiguity if Tribes are to make informed decisions whether to opt out or remain in either Settlement.

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III. The Indemnification Provisions Are Overbroad and Ambiguous as to Tribes

Both agreements include a "claims over" provision, which operate to protect the released parties from claims by any non-released party. It is not clear how such provisions implicate Tribes. For example, if the Band remains in the DuPont Settlement and receives the \$1,750 payment for its contaminated Non-Transient Non-Community Water System, the Band may be liable for a non-class member's PFAS contamination damages rather than DuPont itself. In this scenario, the non-class member's damages will undoubtedly exceed the Band's settlement payment. Conversely, the Band would be limited by the 3M provision if the contamination of the Band's fish is related to a Class Member's water system. The indemnity provisions were revised to exclude states for similar reasons. These concerns must be addressed so that Tribes may fully understand the cost of remaining in the settlements.

IV. Conclusion

As described above, Tribes possess unique interests that do not appear to be addressed under the Proposed Settlements. Given the complexity of these concerns, we ask that you provide clear written statements and judicial acknowledgement to resolve any ambiguities for the Band and similarly situated Indian Tribes.

We have prepared a motion and supporting brief seeking clarification. The draft was shared with Joe Rice on Monday, October 23, and is attached for your reference. In order to resolve the Band's concerns before the November objection deadlines, we request a response to this letter by November 1, 2023. We are available to discuss these requests at your convenience should that be helpful, and we appreciate your consideration of this letter.

Sincerely,



Elizabeth J. Cabraser

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Enclosure: Brief In Support of Motion for Clarification